

WICHITA METROPOLITAN AREA PLANNING COMMISSION

MINUTES

March 4, 2010

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, March 4, 2010, at 1:30 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: G. Nelson Van Fleet, Chair; Debra Miller Stevens, Vice Chair; Shawn Farney; David Dennis; Darrell Downing; David Foster (in @1:31 P.M.); Bud Hentzen; Joe Johnson (out @2:16 P.M.); Don Klausmeyer; Ronald Marnell; John W. McKay Jr.; M.S. Mitchell and Don Sherman (in @1:40 P.M. out @3:00 P.M.). Hoyt Hillman was absent. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Donna Goltry, Principal Planner; Bill Longnecker, Senior Planner; Neil Strahl, Senior Planner; Derrick Slocum, Associate Planner; Joe Lang, Chief Deputy City Attorney; Bob Parnacott, Assistant County Counselor and Maryann Crockett, Recording Secretary.

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1. Approval of the February 18, 2010 MAPC meeting minutes:

MOTION: To approve the February 18, 2010 minutes, as amended.

JOHNSON moved, **MITCHELL** seconded the motion, and it carried (11-0).

2. CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS

- 2-1. **SUB 2010-04: One-Step Final Plat -- TERRADYNE WEST 3RD ADDITION**, located north of Central and on the west side of 159th Street East.

NOTE: This is a replat of 20 lots in the Terradyne West Addition involving boundary shifts. The street layout has not changed. The north portion of the site (Lots 5-7, Block 2, Lot 1, Block 3) has been approved for a zone change (ZON 2009-39) from SF-5, Single-Family Residential to MF-18 Multi-family Residential.

STAFF COMMENTS:

- A. Water Utilities Department advises that water and sewer services are available. City Engineering advises that existing special assessments will be recalculated on a square foot basis unless a Respread Agreement is filed with the Finance Department and approved by the Law Department.
- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- C. City Stormwater Engineering has approved the applicant's drainage plan.
- D. County Surveying requests that the benchmarks include datum.
- E. The access controls as denoted on the Terradyne West Addition - two openings along 159th St E - should be included on this plat.

- F. A vicinity map is needed.
- G. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- H. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- I. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- J. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- K. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- L. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- M. Perimeter closure computations shall be submitted with the final plat tracing.
- N. Westar Energy has advised they have existing equipment located in the area. Any relocation or removal of any existing equipment will be at the applicant's expense.
- O. A compact disc (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send the information via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

MOTION: To approve the February 18, 2010 minutes, as amended.

JOHNSON moved, **MITCHELL** seconded the motion, and it carried (11-0).

FOSTER (in @1:31 P.M.)

2-2. SUB 2010-11: One-Step Final Plat -- FIREPOINT ADDITION, located west of Webb Road, north of 29th Street North.

NOTE: This is a replat of a portion of the Comotara Industrial Park 5th Addition and Mediterranean Plaza Addition. The site has been approved for a zone change (PUD 2006-03, Firepoint PUD#23) from LI Limited Industrial to PUD Planned Unit Development.

STAFF COMMENTS:

- A. Wichita Water Utilities Department has advised that all lots have access to sewer. Lots 1 and 2, Block A have access to water, but water (transmission and distribution mains) needs to be extended to serve Lot 1, Block B.
- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- C. City Stormwater Engineering has approved the applicant's drainage plan.
- D. The Applicant needs to request a PUD adjustment as the PUD parcel boundaries do not correspond with the area being platted.
- E. A note shall be placed on the final plat, indicating that this Addition is subject to the conditions of the Firepoint PUD (PUD 2006-03, PUD #23)
- F. The Applicant shall guarantee the paving of the proposed street to the industrial street standard.
- G. 35-foot building setbacks shall be platted along K-96 and 34th St. North which were established by the PUD. The applicant will also be platting a 10-foot setback along Toben.
- H. The proper plat name shall be referenced in the platlor's text.
- I. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- J. A PUD Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved PUD and its special conditions for development on this property.
- K. County Surveying requests that minimum pads are corrected and noted in the platlor's text.
- L. The platting binder indicates a party holding a mortgage on the site. This party's name must be included as a signatory on the plat, or else documentation provided indicating that such mortgage has been released.
- M. The signature line for the County Clerk needs to be revised to reference "Kelly Arnold."
- N. The MAPC signature block needs to reference "G. Nelson Van Fleet" as Chair.
- O. The MAPC signature block needs to reference "John L. Schlegel, Secretary."
- P. The year "2010" needs to replace "2008" within the signature blocks.
- Q. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified

with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.

- R. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- S. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- T. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- U. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- V. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- W. Perimeter closure computations shall be submitted with the final plat tracing.
- X. Westar Energy has advised they have existing equipment located in the area. Any relocation or removal of any existing equipment will be at the applicant's expense.
- Y. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

MOTION: To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

DENNIS moved, **FARNEY** seconded the motion, and it carried (12-0).

- 2-3. SUB 2010-05: One-Step Final Plat -- ASR M-34 WELL SITE ADDITION**, located on northeast corner of 117th Street North and 119th Street West.

NOTE: This site is located in the County in an area designated as "rural" by the Wichita-Sedgwick County Comprehensive Plan. A Conditional Use (CON 2010-06) for a Major Utility has been requested. It is located in the Sedgwick Area of Influence.

STAFF COMMENTS:

- A. This plat will be subject to approval of an associated Conditional Use for a Major Utility and any related conditions.
- B. Since neither sanitary sewer nor municipal water is available to serve this property, the applicant shall contact County Code Enforcement to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage and water wells. A memorandum shall be obtained specifying approval.
- C. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- D. County Engineering has approved the drainage plan.
- E. County Engineering has approved the access controls. In accordance with the site plan, the plat denotes complete access control along 119th St West and one opening along 117th St North. The plat should be corrected to denote "complete access control" along the north 101.69 feet.
- F. Sedgwick County Fire Department advises that the plat should meet the requirements of the Sedgwick County Service Drive Code.
- G. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- H. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- I. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- J. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- K. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- L. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.

- M. Perimeter closure computations shall be submitted with the final plat tracing.
- N. A compact disc (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send the information via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

MOTION: To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

DENNIS moved, **FARNEY** seconded the motion, and it carried (12-0).

- 2-4. SUB 2010-08: One-Step Final Plat -- GREIFFENSTEIN SQUARE ADDITION**, located on the south side of 21st Street North, west of 119th Street West.

NOTE: The site has been approved for a zone change (ZON 2009-37) from SF-20, Single-Family Residential to GO, General Office. This site is located in the County adjoining Wichita's city limits and annexation is required.

STAFF COMMENTS:

- A. As this site is adjacent to Wichita's City limits, the Applicant shall submit a request for annexation. The final plat shall not be scheduled for City Council review until annexation has occurred.
- B. City of Wichita Water Utilities Department advises that municipal services are available to serve the site, however the applicant will be responsible for transmission and distribution in lieu of assessments (ILOA's) on the water and main and lateral ILOA's on the sewer.
- C. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- D. County Engineering has approved the applicant's drainage plan. City Stormwater Engineering has approved the drainage plan. A minimum pad elevation is needed.
- E. County Surveying advises that minimum pad elevations need to be shown.
- F. Traffic Engineering has approved the access controls. The plat proposes one access opening along 21st St. North.
- G. The vicinity map needs corrected to reference the proper plat.
- H. The platlor's text shall include reference to "a lot, a block and a reserve" in the owner's certificate.
- I. Provisions shall be made for ownership and maintenance of the proposed reserves. A covenant shall be submitted regarding ownership and maintenance responsibilities.
- J. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.

- K. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- L. The platting text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- M. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- N. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- O. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- P. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Q. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. A compact disc (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send the information via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

MOTION: To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

DENNIS moved, **FARNEY** seconded the motion, and it carried (12-0).

3. PUBLIC HEARING – VACATION ITEMS

PUBLIC HEARINGS

4. Case No.: CUP2009-22 (deferred from 9-24-2009) – Hoover Road, LLC/Clark Investment

Group c/o Johnny Stevens (owner), Ruggles & Bohm c/o Chris Bohm (agent) Request Amendment #1 to DP-82 Cross Town East Commercial CUP for an offsite digital billboard sign in Parcel 3 on property described as:

The North 213.5 feet of the East 190 feet of Lot 2, Cross Town East Addition to Wichita, Sedgwick County, Kansas, generally located south of Kellogg Avenue and east of Webb Road.

BACKGROUND: The applicant proposes to remove the prohibition on off-site billboards on DP-82 Cross Town East Community Unit Plan ("CUP") with respect to Parcel 3. The parcel is located south of Kellogg and about one block east of Webb Road, at the southwest corner of Kellogg Street and Wildcat Lane. The property is zoned GC General Commercial ("GC"). An off-site sign is a sign that delivers a message or advertisement other than the name, occupation or nature of the activities conducted on the premises or the products sold or manufactured thereon. Billboards are offsite signs. The applicant is proposing a digital L.E.D. billboard with a maximum area of 672 square feet per side and a maximum height of 30 feet.

This CUP always has prohibited offsite signs. Also, the Unified Zoning Code ("UZC") prohibited off-site signs and billboards within a community unit plan until an amendment to the Code last year. This code amendment allowed the consideration of amending CUPs on a case-by-case basis, upon request of the property owner to determine if a proposed lifting of the prohibition in a particular case is warranted.

The proposed site plan places a full-size billboard (up to 14 feet x 48 feet or 672 square feet) at the northwest edge of Parcel 3. This falls squarely within the future right-of-way of the Kellogg freeway project. The freeway project is currently under design with funding for right-of-way purchase allocated in Wichita's current CIP for the years 2010, 2011 and 2012. Construction funding is allocated for 2015.

Two other billboards are located in this mile segment. A full size billboard is located 750 feet east of the proposed location on Parcel 3. A junior billboard of 14 feet x 24 feet, is located an additional 520 feet to the east. When the junior billboard was installed in 2007 (SGN2006-00974, approved March 7, 2007), the sign company placed it behind the anticipated Kellogg freeway right-of-way rather than at the current property line as requested by this application. Several other right-of-way adjustments already have been made in anticipation of making this segment of Kellogg a freeway. These include a right-of-way purchase on the farm supply store, and right-of-way dedications on DP-36, DP-88 and the car wash at the corner of Kellogg and Greenwich Road.

The proposed sign is located within Airport Hazard Area A and is located approximately 520 feet to the southwest of the end of the old asphalt runway on the Beech property. FAA approval is required for any structure above 25 feet, corresponding to the height limit of 25 feet established on the CUP for Parcel 3. Information on the more detailed airport hazard maps show this parcel to be within the runway approach where the interpolated permitted heights are below requested heights. Without knowing the actual elevation of the pad site, it is difficult to determine if the 25-foot height also encroaches within the conical area shown on the hazard map. It is our understanding that the runway is not in active use; however, it has not been removed or taken off the FAA maps. Therefore, given the proximity to the Hawker Beechcraft runway, a lighted sign may be of concern to potential future reuse of the runway.

The other two billboards in this segment of Kellogg are 30 feet in height, which is the maximum allowable height of billboards unless abutting an elevated freeway. Current freeway plans show Kellogg depressed at this location, because an elevated freeway would encroach into the runway approach path for the active airstrip a little farther to the east. Another billboard is located on the west side of Webb Road, it is not considered to take its sign rights from Kellogg.

DP-82 was approved in 1977 with Parcel 1 (0.75 acres) at the corner of the intersection, currently a liquor store, and Parcel 2 (9.247 acres) with "Proposed uses: of shopping center and or offices, professional personal services, comparison and convenience shopping." (DP-82 Parcel No. 2 was approved July 5,

1977.) A strip center with TG&Y as the major tenant was built in 1977. This was replaced in 1992 by Builder's Square, but this business has been closed since about 1998. An administrative adjustment in 1991 created Parcel 3 (0.93 acres) from Parcel 2, reflected as a lot split recorded in 1994. Parcel 3 was designed to allow a typical small freestanding use. Proposed uses were: restaurant (includes fast food) retail shops, banks and financial institutions, offices medical and dental offices or clinics, tire, battery and accessory stores, pharmacies, small animal clinics, day care centers, and fitness centers, limited to one building on the parcel, small freestanding retail, etc. Parcel 3 was limited to one building. The original 300-foot setback from Kellogg Street, which remains for the balance of Parcel 2, was reduced to the CUP minimum allowed setback of 35 feet for Parcel 3 only. Parcel 3, created in 1991, remains undeveloped.

The surrounding area consists of the Hawker Beechcraft manufacturing and runway facilities, located on property zoned LI Limited Industrial ("LI"). The property to the east and south is zoned GC and used for vehicle sales, vehicle repair and equipment rental, plus the large tract occupied formerly by a Builder's Square, now being renovated and converted to new uses. The property to the west is zoned GC and is a liquor store and parking area for the building under renovation. West of Webb Road, the property is zoned LI and currently has a restaurant and a retail use.

CASE HISTORY: The property is platted as Cross Town East Addition, recorded October 27, 1977. A lot split of the area within Parcel 3 was recorded November 23, 1994, (Film 1490, Page 1686). DP-82 Cross Town East CUP was approved July 5, 1977. This is the first amendment to the CUP. The administrative adjustment granted December 19, 1991, added Parcel 3, increased the number of buildings allowed on the CUP to permit one building on the new parcel, reduced the setback to 35 feet along Kellogg Street, and reduced building height for Parcel 3 to 25 feet. It did not increase the maximum floor area or maximum building coverage. This case was heard at DAB II on August 3, 2009, and deferred. The case was deferred at the request of the applicant from the MAPC meeting of August 6, 2009.

ADJACENT ZONING AND LAND USE:

NORTH:	LI	Hawker Beechcraft manufacturing and runway facilities
SOUTH:	GC	Commercial building, equipment rental, vehicle repair
EAST:	GC	Vehicle sales and repair
WEST:	GC, LI	Liquor store, restaurant, retail

PUBLIC SERVICES: Parcel 3 has direct access to Wildcat Lane on its eastern boundary and with cross-lot access across the CUP to Webb Road. No direct access was permitted to Kellogg Street. The CUP had access limitations of one access point onto Webb Road, two onto Orme Street (the southern boundary of the CUP) and three onto Wildcat Lane.

Kellogg is the major cross-town expressway. It is in the design phase for construction to freeway standards. An interchange would be located at the Webb.

CONFORMANCE TO PLANS/POLICIES: The "2030 Wichita Functional Land Use Guide, as amended May 2005" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "regional commercial." This includes major destination areas with a range of uses including major retail malls, major automobile dealership and big box retail outlets with a regional market draw. The uses on Parcel 2 are in conformance with this designation, as are the major car dealerships located in the mid-mile segment between Webb Road and Greenwich Road. The Unified Zoning Code regulations had been to prohibit billboards in CUPs until last year and the amended regulations contemplate that the prohibition can be removed only by CUP amendment, to allow a public hearing and discussion of the appropriateness of a particular site for a billboard. The requested location of the billboard is within the area for future right-of-way, as depicted on preliminary plans for Kellogg available to the public, and with the City of Wichita, Kansas Adopted Capital Improvement Program 2009-2018 for constructing East Kellogg from Webb to Greenwich to freeway standards. It is the major freeway project during this timeframe. Kellogg has been improved to freeway standards up to the KTA

interchange, and contracts were given in 2008 for design of the KTA/Webb Road/Kellogg interchange and the Greenwich/Kellogg interchange.

RECOMMENDATION: The CUP has always had a restriction to onsite signs. To approve this amendment is to remove a restriction in place. The ramifications are potentially detrimental, resulting in hiking the costs of construction for no benefit to the public. In contrast, like other uses located along the Kellogg frontage from Webb Road to Greenwich Road, this CUP stands to benefit financially from the freeway construction. Many other locations along this mile segment have facilitated the Kellogg freeway construction in anticipation of these future gains by dedication of right-of-way. The same applicant owns all of Parcel 2 and Parcel 3, and could have chosen a different placement that would have afforded the good advertising visibility without creating this public hardship, as was done by the most recent billboard erected nearby in 2006. Based on these factors, plus the information available prior to the public hearing, staff recommends the request for Amendment #1 to DP-82 be DENIED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: DP-82 was approved in 1977 with a Parcel 1 (0.75 acres) at the corner of the intersection, currently a liquor store, and Parcel 2 (9.247 acres) with "Proposed uses: of shopping center and or offices, professional personal services, comparison and convenience shopping." (DP-82, Parcel No. 2 was approved July 5, 1977.) A strip center with TG&Y as the major tenant was built in 1977. This was replaced in 1992 by Builder's Square, but this business has been closed since about 1998, now being redeveloped with other commercial uses. An administrative adjustment in 1991 created Parcel 3 (0.93 acres) from Parcel 2, reflected as a lot split recorded in 1994. Parcel 3 was designed to allow a typical small freestanding use. Proposed uses were: restaurant (includes fast food) retail shops, banks and financial institutions, offices medical and dental offices or clinics, tire, battery and accessory stores, pharmacies, small animal clinics, day care centers, fitness centers, limited to one building on the parcel, small freestanding retail, etc. Parcel 3 was limited to one building. The original 300-foot setback from Kellogg Street, which remains for the balance of Parcel 2, was reduced to the CUP minimum allowed setback of 35 feet for Parcel 3 only. Parcel 3, created in 1991, remains undeveloped. A billboard is located west of Webb Road and two are located on Kellogg east of the application area. The surrounding area consists of the Hawker Beechcraft manufacturing and runway facilities, located on property zoned LI Limited Industrial ("LI"). The other property to the east and south is zoned GC and used for vehicle sales, and vehicle repair and equipment rental. West of Webb Road, the property is zoned LI and currently has a restaurant and a retail use.
2. The suitability of the subject property for the uses to which it has been restricted: The area is suitable as currently zoned and allowed by the community unit plan. A wide range of uses that provide potential economic value are currently allowed by the CUP. The requested changes conflicts with the Kellogg freeway. A lighted sign might also conflict with air operations should the inactive airstrip be reactivated.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The number of billboards allowed in a mile segment are limited by the length of frontage zoned LC or more intensive and where billboards are not prohibited but to a maximum number per segment. Minimum spacing is 300 feet apart. The location of any billboard, but the nature of the Wichita Sign Code requirements, could preempt other billboard sites in more appropriate locations.
4. Length of time the subject property has remained vacant as zoned: The lot encompassing Parcel 2 and Parcel 3 was first developed with a variety store, then with a home improvement center, now being converted to less intensive commercial uses. Parcel 3 never has been paved even as parking for the earlier uses.
5. Relative gain to the public health, safety, and welfare as compared to the loss in value or the hardship

placed on the applicant: The relative loss is one-sided, only borne by the public in terms of potential increase in costs to acquire right-of-way after a billboard is placed on the property to increase intensification of the use of the property in a manner not allowed today. The applicant faces no loss in value from denial of this request, as the development rights of the parcel would not be altered by denial from today's conditions. Furthermore the applicant could have sought a location that respected future right-of-way needs and did not create financial hardship on the community.

6. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "2030 Wichita Functional Land Use Guide, as amended May 2005" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "regional commercial." This includes major destination areas with a range of uses including major retail malls, major automobile dealership and big box retail outlets with a regional market draw. The original use on Parcel 2 was in conformance with this designation, as are the major car dealerships located in the mid-mile segment between Webb Road and Greenwich Road. The Unified Zoning Code regulations had been to prohibit billboards in CUPs until last year and the amended regulations contemplate that the prohibition can be removed only by CUP amendment, to allow a public hearing and discussion of the appropriateness of a particular site for a billboard. The requested location of the billboard is within the area for future right-of-way, as depicted on preliminary plans for Kellogg available to the public, and with the City of Wichita, Kansas Adopted Capital Improvement Program 2009-2018 for constructing East Kellogg from Webb to Greenwich to freeway standards. It is the major freeway project during this timeframe. Kellogg has been improved to freeway standards up to the KTA interchange, and contracts were given in 2008 for design of the KTA/Webb Road/Kellogg interchange and the Greenwich/Kellogg interchange.
7. Impact of the proposed development on community facilities: The requested amendment will result in a detrimental impact on community facilities and would be a change from impacts allowed today by development of the parcel by current CUP allowable provisions.

The applicant's request has been modified since providing the staff report to the MAPC members for consideration at this meeting

The applicant has been in discussions with the City and has agreed in concept to relocate the requested billboard sign to behind the right-of-way line that will be established as part of the Kellogg freeway construction. Further, the billboard would not be used to affect the value for acquisition of the right-of-way.

The proposed relocation of the sign is shown on a revised sign plan. It shows the sign located 10 feet from the property line, just behind the utility easement. This location is less than the minimum building setback of 20 feet in GC General Commercial zoning, the underlying zoning for the tract, as well as below the 35-foot building setback minimum for CUPs.

Other billboards observe building setbacks of 20 feet, with the exception being perhaps PUD #16, Rusty Eck. Its sign has both off-site and on-site advertising and is located with no setback from the property line. (On-site signs can be in setbacks, but must stay out of easements unless they are subject to hold harmless agreements.)

At the District I Advisory Board meeting held Monday, March 1, 2010, the District Advisory Board recommended approval of the request subject to the understanding that the applicant agrees to relocate the billboard at the owner's expense when needed for construction of Kellogg freeway and not to use the billboard to affect right-of-way acquisition costs, subject to Wichita Sign Code, KDOT and FAA requirements for the billboard location.

The Sign Code requires a minimum setback of 20 feet. The applicants are requesting to reduce that setback to 10 feet (and perhaps more if they could obtain a hold harmless). Because this is in a

Community Unit Plan, the Planning Commission has the ability to modify minimum sign standards, subject to it resulting in better planning. Otherwise this requested reduction would have required a variance.

Staff recommends APPROVAL subject to the applicant being responsible for all relocation costs, the billboard not affecting right-of-way acquisition costs and the location being subject to the Wichita Sign Code requirements (20 feet).

If the Planning Commission feels it is appropriate, the Planning Commission can recommend reduction of this setback.

DONNA GOLTRY, Planning Staff presented the Staff Report. She explained that the applicant's request has been modified since providing the Staff Report to the MAPC members for consideration at the meeting and because of these modifications; staff was now recommending approval of the request. She said the applicant has been in discussions with the City and has agreed in concept to relocate the requested billboard sign to behind the right-of-way line that will be established as part of the Kellogg freeway expansion. She added that the billboard would not be used to affect the value for acquisition of right-of-way. She referred to a revised sign plan which showed the proposed relocation of the sign, 10 feet from the property line, just behind the utility easement. She commented that this location was less than the minimum building setback of 20 feet in GC General Commercial zoning, the underlying zoning for the tract, as well as below the 35-foot building setback minimum for Community Unit Plans. She explained that on-site signs can be in setbacks, but must stay out of easements unless they are subject to a hold harmless agreement.

GOLTRY said District I Advisory Board (DAB) recommended approval of the request subject to the understanding that the applicant agrees to relocate the billboard at the owner's expense when needed for construction of the Kellogg freeway and not to use the billboard to affect right-of-way acquisition costs, subject to other regulatory requirements such as the Wichita Sign Code, Kansas Department of Transportation (KDOT) and Federal Aviation Administration (FAA) requirements for the billboard location. She explained that the Sign Code requires a minimum setback of 20 feet. She said the applicant's are requesting that the setback be reduced to 10 feet and perhaps more if they can obtain a hold harmless agreement. She said because this is a CUP, the Planning Commission has the ability to modify minimum sign standards, subject to it resulting in better planning. She said otherwise, the requested reduction would require a variance.

GOLTRY concluded by stating that staff recommends approval subject to the applicant being responsible for all relocation costs, the billboard not affecting right-of-way acquisition costs and the location being subject to the Wichita Sign Code requirement (20 feet). She said the Planning Commission can recommend reduction of the setback if they feel it is appropriate.

SHERMAN (in @1:40 P.M.)

CHRIS BOHM, RUGGLES AND BOHM, AGENT FOR THE APPLICANT said they have been through months of discussions regarding location of this billboard and are glad this is almost resolved. He said the applicant is willing to submit a written agreement concerning movement of the sign and the elimination of its value in any negotiations regarding any condemnation case for the highway right-of-way. He said the Director of Public Works had requested that in writing. He said that takes care of issue number one. He said for issue number two, they would like to ask that the 20-foot Sign Code setback from the future right-of-way line location be waived. He said the new right-of-way line for Kellogg will be right in the middle of the utility easement that runs east and west. He said they feel with the burden of having to move the sign and negotiate right-of-way in the future and the effect on the site in general, they would like to have the ability to at least butt the sign up against the south line of the utility easement. He said that is what they are asking for today, in addition to staff's comments.

DIRECTOR SCHLEGEL said he was getting a mixed message. He said he thought Mr. Bohm asked that the setback requirement be totally waived which would create the potential for moving the sign up to the future right-of-way line which runs down the middle of the easement. But when he closed his remarks, he asked that they be allowed to move the sign up to the easement line.

BOHM said they would like to move the sign at least to the easement line which would make a 10-foot offset by default. He said the only way they can encroach on the easement is to obtain a hold harmless agreement at some point in the future from all of the affected utility companies.

MITCHELL clarified, to the south line of the utility easement?

BOHM said they are asking for the ability to encroach 10 feet into the utility easement which will be bisected by the new property line. He said with a zero foot setback, they could encroach 10 feet into the easement. He said if they cannot get a hold harmless agreement, they will have to shift south 10 feet by default.

MITCHELL clarified again, the south line as the location.

BOHM said they would rather have a complete waiver of the 20 feet.

MARNELL asked Mr. Bohm to describe the billboard. He said the billboards he has seen recently tend to have a center pole which is some distance from the ends of the sign. He said he didn't know if the poles are centered exactly or what. He also asked how far from the ground the base of the sign was in terms of ground clearance for something to go underneath the sign.

BOHM said it is a triangular, center post sign approximately 30 foot in height; 16 feet clear from the ground to the bottom of the super structure of the sign.

MARNELL asked how far the pole would be from the highway.

BOHM said since the sign is 48 feet, the pole is located approximately 24 feet from the highway.

MCKAY asked how far the sign will be encroaching into the easement and right-of-way.

BOHM said they are requesting a 20-foot waiver and hold harmless agreement to encroach into the easement, the sign would encroach 10 feet into the easement, abutting the property line and it would not extend into the right-of-way.

MCKAY asked staff if the easement would be widened up to 20 feet or would the difference come out of highway right-of-way.

DIRECTOR SCHLEGEL said they did not know the answer to that question and would have to talk to someone in Public Works.

BOHM added that he also did not know the answer to that because they didn't talk about a wider easement at any time.

MCKAY commented that he thought the easement would stay the same, but if the easement is changed it will make a difference where the sign pole is installed.

BOHM agreed and said if the City asks for more easement, it will change the sign location.

MARNELL clarified that the utility easement currently exists.

BOHM said yes that was correct.

MARNELL said typically utilities have the ability or right to bury or place equipment in the easement. He said it seems to him that the utilities have lots of room to work and that something could be accommodated if that is the Commission's desire.

JOE LANG, CHIEF DEPUTY CITY ATTORNEY said the Commission could consider the recommendation proposed in the original Staff Report. He said it was not appropriate to base a decision on any negotiations with the City on condemnation issues or hold harmless agreements or any of those things.

MARNELL asked Mr. Lang to explain what he just said.

LANG explained that the Staff Report recommended denial of the request based on the impact the proposed new billboard would have on the right-of-way, Federal Aviation Administration height requirements and other issues. He said those are appropriate factors to consider in a zoning decision. He said it is not appropriate to consider and make part of the decision process whether or not the City is going to condemn, or what value is going to be placed on any condemnation of land or any agreement on relocation of the proposed billboard or on the hold harmless agreement that was talked about. He said those are factors that are not within the Golden Rules criteria that should be considered when approving or disapproving the amendment request. He said those are separate City issues and whether the City has worked out an agreement with the landowner for right-of-way acquisition should not be part of the Commission's considerations.

MARNELL he said one item that he felt should be corrected for the record is that staff is now recommending approval and that the difference between staff's position and the applicant's position now comes down to location of the sign. He said the hold harmless agreement was mentioned in the staff presentation, but he was not aware whether it was in the memorandum, since he has not had a chance to read it because he received it just prior to the meeting.

LANG commented that the hold harmless agreement was mentioned in the staff memorandum. He said he thought staff was explaining that the applicant has changed where they want to locate the billboard, and the new location is acceptable to staff.

MARNELL clarified then even if the applicant had left the sign in the prior location, it should not be considered because it is outside zoning issues.

LANG stated that was correct.

MILLER STEVENS clarified that staff was recommending that the Commission approve the sign being placed in the original location and that the Commission not consider that the sign will be moved or any possible hold harmless agreement.

LANG commented that he would let staff address that issue.

GOLTRY responded that the sign would be constructed in the original location and that the applicant would be able to move it at a future date.

MILLER STEVENS asked if that was in conflict with Mr. Lang's recommendation.

LANG said the fact that the applicant is willing to move the sign at a later date is an important fact to consider. He said what the applicant has worked out with the City for compensation or "trade-off" for moving the sign is not something that should be considered.

MITCHELL asked if staff would be submitting a report to the City Council that would include the Golden Rule issues backing the recommendation today which were not in the memorandum received by the Commission today.

GOLTRY suggested that the Commission add some “Golden” factors to their motion today, unless they go with the original recommendation for denial that was in the Staff Report. She said the motion should include the grounds for approval.

MITCHELL asked what those grounds would be, in staff’s opinion.

GOLTRY commented the ability to place an off-site sign or billboard is something that is a discretionary factor in a CUP; after having evaluated the current and future location of the sign it appears that the future location behind the right-of-way would be an appropriate location for a billboard in this particular CUP; and that billboards are a use that are found along Kellogg so this request is similar to other existing uses along Kellogg. She recommended incorporating those findings along with others the Commission finds appropriate.

DIRECTOR SCHLEGEL suggested another item under “impact of proposed development on community facilities” was that approval of the billboard in the current right-of-way was because the applicant is willing to move it so it will not have a detrimental impact on Kellogg freeway expansion.

MOTION: To approve subject to staff recommendation and the supplemental memorandum, and Golden Rules cited above.

MITCHELL moved, **JOHNSON** seconded the motion.

There was brief discussion concerning the proposed motion.

DIRECTOR SCHLEGEL said staff’s recommendation for approval was subject to the understanding that the applicant has agreed to relocate the billboard in the future and would enter into an agreement with the City. He added that the agreement would also stipulate that the additional value this billboard would give to that property would not be used by the applicant when negotiating with the City for right-of-way for Kellogg expansion.

LANG said approval of the request can be based upon the applicant relocating the sign out of the right-of-way when needed. He said the approval should not include the relocation and right-of-way acquisition costs which is subject to a separate agreement with the City and should not be part of the zoning decision.

DIRECTOR SCHLEGEL said then the stipulations cannot be part of the motion for approval.

LANG said while the applicant can offer to agree to certain concessions, those cannot be required by this Commission as part of the conditions. He said that is a separate agreement, separate from this zoning action.

MARNELL clarified that the sign could come up to right-of-way line.

MITCHELL said yes, up to the right-of-way.

FOSTER referred to the Comprehensive Plan Visual Form map, with regards to the visual character of the City. He said the Visual Form map was updated in 2006, and that three primary gateways were identified along this corridor which spoke to fostering efforts to improve community perception and increase the quality of life in Wichita through emphasis of the visual character. He said he will not support the motion based on the Comprehensive Plan.

DOWNING said he was clear on the current sign location and the proposed location the sign will be moved to, but he was not clear how that is affected by the setbacks. He asked if that was going to be left up to the City or addressed in the motion, since the agent had requested that the setback be waived.

MITCHELL said that would be covered in negotiations between Public Works staff and the applicant.

DIRECTOR SCHLEGEL said he had a concern that he wanted put on the record. He said staff was not aware of the legal concern expressed by Mr. Lang when they put the revised recommendation together. He said staff has been aware of negotiations between the City and the applicant regarding the eventual removal of the sign out of the right-of-way; the applicant's willingness to pay for the relocation and not have the additional value of the billboard added to the right-of-way acquisition costs. He said in making the approval recommendation that was a part of the stipulations that would work with the negotiations the City has underway with the applicant. However, he said if the Commission approves the CUP amendment today, the MAPC's action is final, unless there was an appeal or protest. He said if the motion is approved, the applicant will be allowed to build the sign in the right-of-way without the agreement that was discussed being in place. He said he is concerned about that. He said if the amendment is approved without the agreement in place, the applicant could then seek compensation to have the sign moved and seek additional compensation for the right-of-way acquisition.

MILLER STEVENS suggested since the applicant and City are engaged in on-going negotiations, that this item be deferred until a final agreement is reached and negotiations are concluded.

SUBSTITUTE MOTION: To defer the item until negotiations and/or an agreement is finalized.

MILLER STEVENS moved, **DENNIS** seconded the motion, and it carried (12-1).
FOSTER – No.

BOHM said if a deferral is necessary to enter into an agreement, they would be amenable to that. He suggested 60 days with the ability to come back within 30 days if issues have been resolved.

DIRECTOR SCHLEGEL suggested the item be deferred until an agreement is finalized.

MCKAY commented that he wanted to be sure the agreement that was discussed today stays the same and that they don't come back with something different. He mentioned compensation for the sign not being an issue for right-of-way.

MILLER STEVENS said part of the issue was the Planning Commission cannot approve the issue that is being negotiated. She said the item is being deferred until those negotiations are finalized. She said the Commission will then base the approval on the end product of the negotiations.

DENNIS said he understood Mr. McKay's concern; however, the applicant and City may come up with something other than what has been proposed that benefits both parties. He said they may come up with a better idea and he doesn't want to tie their hands on negotiations.

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5. **Case No.: CON2010-01** - Scott and Fawnetta McCool request County Conditional Use for Kennel, Boarding/Breeding/Training for 65 dogs on property zoned RR Rural Residential:

the north 624 Feet of the east half of the southeast quarter of Section 25, Township 27 South, Range 4 West of the 6th P.M., Sedgwick County, Kansas Except that part described as beginning at the northeast corner therefore thence south along the east line of said southeast quarter, 589.24 feet; thence west parallel to the north line of the said southeast quarter, 477.44 feet; thence north

parallel to the east line of said southeast quarter, 589.24 feet to the said north line; thence east along said north line, 477.44 feet to the point of beginning, generally located west of 311th Street West on the south side of US 54 (1225 South 311th Street W.).

BACKGROUND: The applicant is seeking Conditional Use approval for a boarding, breeding, training kennel for up to 65 dogs. The applicant currently has 24 dogs on-site. The applicant owns 12.26 acres zoned RR Rural Residential ("RR") located west of South 311th Street West, 2,010 feet north of West 15th Street South (1225 South 311th Street West, Garden Plain). The area where the dogs are proposed to be confined is less than one acre of the applicant's total ownership.

The applicant's property is an unplatted, flag-shaped tract with a 35-foot wide driveway that connects the majority of the property with 311th Street. The property is developed with a single-family residence and a 36 by 32-foot metal accessory structure. North of the accessory structure is an area that is fenced-in with metal panels that is as wide as the accessory structure and runs 32 feet north from the building. As described in Part One of the applicant's site plan description, the applicant intends to use the northern eight feet of the 36 by 32-foot accessory structure and the fenced-in area noted above as part of his kennel operation. This area is proposed to house "around 35 dogs." The outdoor enclosure is located approximately 177 feet from the applicant's eastern property line, and 50 feet from the southern property line, and some 246 feet from the closest off-site residence.

Additionally, two, 12 by 24-foot shelters, with four outside pens per shelter are proposed as a possible future expansion. These shelters are proposed to be located north of the existing lagoon, could hold up to 35 dogs, and are described in Part Two of the applicant's site plan description. These two structures are to be located 250 feet west of the applicant's eastern or front property line, 192 feet from the southern property line and well over 250 feet from the closest off-site residence. Both proposed kennel enclosures are located more than 300 feet from the northern and southern property line.

North of the applicant's site is 400 feet of U.S. Highway 54 right-of-way. North of U.S. 54 is farm ground zoned RR. East of the applicant's property is 5.28 acres zoned RR and developed with a single-family residence that is located approximately 249 feet from the closest proposed kennel. South of the application area is a 22.45-acre tract zoned RR and developed with a single-family residence that is located approximately 438 feet from the closest proposed kennel. West of the applicant's ownership are 77 acres used for agriculture, also zoned RR.

"Last year" the applicant planted a double row of cedar trees along the southern property line for a distance of some 890 feet, beginning at the southeast corner of the applicant's property. The applicant also planted another double row of trees along his eastern property line that begins at his driveway and runs north approximately 325 feet. These trees appear to be approximately 12 inches, maybe 18 inches, in height; however the trees do not currently provide the required screening cited in Sec. III-D.6.k.3 listed in the following paragraph. A waiver of this requirement by the Board of County Commissioners can be sought; without the waiver additional screening will have to be installed.

The *Wichita-Sedgwick County Unified Zoning Code* ("UZC") permits boarding, breeding and training kennels with Conditional Use approval. As defined by the UZC (Sec II-B.6.h), a boarding, breeding and training kennel houses five or more adult dogs, three or more of which are owned by someone other than the property resident, and premises housing over ten adult dogs. The UZC (Sec II-B.4.g) defines an adult dog as being older than 12 months of age. If approved as requested, the Conditional Use would allow up to 65 adult dogs plus an undetermined number of puppies 12 months or younger. Supplementary Use Regulation Sec III-D.6.k.1-3 establish certain development standards for boarding, training and breeding kennels: 1) The minimum lot area is five acres, unless all animals are harbored indoors with no discernible noise or odor at the property lines; 2) outside runs, holding pens or other open-air type enclosures and shelter shall be located being the front setback line and located at least 200 feet from any dwelling unit other than the owner's and at least 50 feet from contiguous property lines and 3) screening shall be provided except for those facilities located 600 feet or more from contiguous property lines.

Screening shall be provided by a structure, solid or semi-solid fencing (4-8 feet in height), landscape materials, earth berms or natural site features maintained for the purpose of concealing the view of the animals behind such (screening) from activities on contiguous properties. If fencing over six feet in height, landscape materials or earth berms are used, a plan must be submitted for approval by the Planning Director and the Zoning Administrator. Fencing used for screening may have no more than five percent open surface. Landscape materials must provide the desired screening effect within the first growing season following installation and throughout the year every year thereafter. The RR zoning district has a front building setback of 30 feet.

CASE HISTORY: None

ADJACENT ZONING AND LAND USE:

NORTH: RR Rural Residential; U.S. 54 Highway
SOUTH: RR Rural Residential; single-family residence
EAST: RR Rural Residential; single-family residence
WEST: RR Rural Residential; agriculture

PUBLIC SERVICES: The site is located outside any identified public sewer or water service area; therefore the site would be dependent upon on-site services. A sewage lagoon can be identified on the aerial. South 311th Street West is a sand and gravel road with approximately 50 feet of half-street right-of-way at the applicant's driveway.

CONFORMANCE TO PLANS/POLICIES: The Wichita and Small Cities 2030 Urban Growth Areas map depicts this site as a "rural area." The rural area encompasses land outside the 2030 urban growth areas for Wichita and the small cities. This category is intended to accommodate agricultural uses, rural based uses that are no more offensive than those agricultural uses commonly found in Sedgwick County, and predominately larger lot residential exurban subdivisions with provisions for individual, or community water and sewer services. The Garden Plain Comprehensive Plan on file with the Metropolitan Area Planning Department is from 1972, and does not include this property within the plan's future land use map. The application area is located within Garden Plain's "zoning area of influence." The application has been referred to their planning commission for consideration.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

- (1) Conditional Use approval is granted for a boarding, breeding and training kennel for up to 65 dogs. The site shall be developed and maintained in substantial compliance with the approved site plan. No more than 35 dogs may be housed in any one of the two kennels at any one time.
- (2) The kennel shall comply with Section III.D.6.k of the Wichita-Sedgwick County Unified Zoning Code, the Kansas Pet Animal Act, and all applicable federal, state, and local requirements prior to commencing kennel operations.
- (3) No permits to operate a kennel are to be issued until the site plan is approved.
- (4) The kennel operator shall have on file proof of rabies vaccinations by a licensed veterinarian.
- (5) Cleaning of the kennel facility shall be performed as often as necessary to maintain sanitary conditions, and a "suitable method" of eliminating excess water from animal housing facilities shall be provided as determined by Environmental Services. New interior surface materials shall be constructed of non-porous materials that are impervious to moisture.
- (6) Sufficient quantities of food and water shall be provided to keep the dogs in good physical

condition. The animals shall be fed at least once daily and provided clean water at all times. Food and water containers shall be located to minimize contamination and shall be cleaned as often as necessary to maintain sanitary conditions.

- (7) All waste materials shall be disposed of in such a manner as to minimize odors and disease hazards. The kennel shall be maintained in a sanitary manner as required by applicable codes.
- (8) The animals confined in the boarding kennel shall be maintained in good physical condition, free of infectious diseases and parasites.
- (9) The kennel facility shall be open to the unannounced inspection by Code Enforcement personnel during reasonable daylight hours to insure continued compliance with the above requirement.
- (10) If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: North of the applicant's site is 400 feet of U.S. Highway 54 right-of-way. North of U.S. 54 is farm ground zoned RR. East of the applicant's property are 5.28 acres zoned RR and developed with a single-family residence that is located approximately 249 feet from the closest proposed kennel. South of the application area is a 22.45-acre tract zoned RR and developed with a single-family residence that is located approximately 438 feet from the closest proposed kennel. West of the applicant's ownership are 77 acres used for agriculture, also zoned RR. Property in the larger area is fairly evenly split between large-lot residential and agricultural activities.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned RR, Rural Residential, which permits primarily large-lot residential and agricultural uses. The applicant can have up to four adult dogs before Conditional Use approval for a kennel is required. The site could be maintained and have economic value as a single-family residence with a restriction limiting the site to no more than four adult dogs.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the Conditional Use will permit a boarding, breeding and training kennel; a use that, as far as staff can determine, is not now currently present in the larger neighborhood. Traditional objections to kennels often include concerns with: excessive barking, animals escaping, increased traffic and preservation of property values. The recommended conditions of approval are designed to minimize foreseeable detrimental impacts.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval would presumably provide the applicant with another source of income that he would lose if the request were to be rejected. If approved the dog buying public would have another choice of where to shop for a dog. If there are neighbors in opposition, they may feel that any gain made by the applicant or the public is at the expense of nearby neighbor's right to enjoy the outdoor use of their land with no more noise or nuisance than typical agricultural or rural operations would make.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Wichita and Small Cities 2030 Urban Growth Areas map depicts this site as a "rural area." The rural area encompasses land outside the 2030 urban growth areas for Wichita and the small cities. This category is intended to accommodate agricultural uses, rural based uses that are no more offensive than those agricultural uses commonly found in Sedgwick County, and

predominately larger lot residential exurban subdivisions with provisions for individual, or community water and sewer services. The Garden Plain Comprehensive Plan on file with the Metropolitan Area Planning Department is from 1972, and does not include this property within the plan's recommended future land use map. Rural areas are where one would expect to find larger kennel operations.

6. Impact of the proposed development on community facilities: Approval of the project should have minimal impact upon community facilities. If the application is approved, traffic will likely increase to some degree. With a Conditional Use, code enforcement duties will increase somewhat when compared to a residence without an activity requiring a Conditional Use.

DALE MILLER, Planning Staff presented the Staff Report. He reported that the Garden Plain Planning Commission recommended approval of the request. He referred to the Staff Report, Recommendation, item #5, last sentence. He said County Code Enforcement has requested that the kennel's interior surface be of a "non-porous" material and requested substitution of the last sentence with the following: "Interior surface materials shall be constructed of non-porous materials that are impervious to moisture." He also mentioned page 3, paragraph 1, "screening will be provided except for those facilities located 600 feet or more from contiguous property lines". He referred to the applicant's site plan which showed that the kennel was not located 600 feet or more from contiguous property lines, so screening will need to be provided, unless the applicant is granted a waiver. He said the applicant will be required to build some sort of fence along the east and south property lines. He commented that the applicant planted a row of cedar trees; however, it is going to take a while before they provide the screening that is required by Code. He commented that Tim Wagner from Sedgwick County Code Enforcement was present to answer any questions.

JOHNSON (Out @2:16 P.M.)

MILLER STEVENS asked for clarification of the change requested by County Code Enforcement.

MILLER said the applicant will be required to provide non-porous material (they currently have rock) which is impervious to moisture prior to commencing operation of the kennel.

MCKAY referred to the aerial photo of the application site and asked why a fence around the operation itself wouldn't suffice? He said what staff is describing will take hundreds of feet of fencing.

MILLER said technically the applicant could build the fence around just the kennel area. He also offered another variation of fencing along both kennel areas.

SCOTT MCCOOL, 1225 S. 311TH STREET, WEST, APPLICANT said they have lived in Garden Plain a little over a year. He said they bought the dogs in February and have 24 dogs on the property. He said they were not aware that there was a zoning issue until recently. He said they have the kennel area screened, but it does not reach the 6-foot height requirement. He asked if anyone had questions.

GLEN LAYMON, 1221 S. 311TH STREET, WEST said he lives directly east of the application site. He said he was opposed to this given the fact that on several occasions, three in fact, the dogs have been loose and killed upwards of 50 of his birds (chickens and guinea fowl). He said the last incident back in October brought this issue to a head. He said he has been in contact with Animal Control and they tell him that their hands are tied and that they have no authority to do anything about the situation. He said he is trying not to make this personal, but said it is personal to him. He commented on the Staff Report recommendation to allow up to 65 adult dogs at the site. He said if they have five studs the rest are female, there could be upwards of 400 puppies there at any one time. He also said the report doesn't say anything about the size of the dogs, it just says canines and that could be Pit Bulls or German Shepherds. He commented that he lost 17 birds in his own yard the last time the dogs got loose. He said Mrs. McCool went around his yard and picked up all the dead animals. He said he called the Sheriff's

Department the last time it happened. He said he had pictures of dead birds killed on the previous two occasions. He said good fences make good neighbors and added that the applicant's goats also get out and eat the other neighbor's alfalfa. He said since both applicants work, how much damage could 65 dogs do before someone got home. He said this isn't about leaving the gates open. The dogs dig under the fence because the kennel is not concrete and there is no chain link fence like with a nice kennel. He said the scope of the application is too broad.

MARNELL asked if they were secure kennels made of concrete with tops on the runs would Mr. Laymon still object to a kennel?

LAYMON said yes sir. He said he cannot even go out in his own backyard because the dogs are continually yipping, barking and raising Cain as long as he is out there. He added that there are more than 10 dogs located there at this minute.

CHAIRMAN VAN FLEET asked Mr. Laymon if he had been compensated for the loss of the chickens.

LAYMON said yes, the last time the McCool's paid for the birds and feed and \$50 more than he asked for. He said he was not compensated on the two previous occasions.

CHAIRMAN VAN FLEET asked Mr. Laymon for his thoughts on the waiving of the fence requirement.

LAYMON said he has tried to put up a fence, but they don't know exactly where the property line is. He said he and the prior owner of this property started building a fence, but didn't get it done before this gentleman and his wife bought the place. He added that he has not killed one of the applicant's animals even though the applicant's animals have routed up his back yard and killed his chickens.

HENTZEN asked Mr. Laymon if he raised birds for sale or were they for his own use?

LAYMON said his birds are for his own use.

HENTZEN commented on the boarding, training and breeding kennel application and asked does that mean the owner is raising the dogs and selling them as a business?

CHAIRMAN VAN FLEET suggested Staff or the applicant answer that question.

BRIAN FOSTER, 1357 S. 311STH STREET, WEST said he lives in the house to the south of the application area. He said he and his wife were originally from Garden Plain and have 23 acres of land planted in alfalfa. He said they moved back to Garden Plain to experience small town USA to have a nice place to raise their family. He said they have two girls, 10 and 7 years old. He said they have built a nice place and work hard at keeping their property up. He commented that he has not met the applicants and has no hard feelings towards them, but he asked if the Commissioners could put themselves in his shoes. He said they have spent money to build a nice house to raise a family and now dog kennels are coming in after the fact. He said if you have animals they get out. He said when dogs run in packs they can be vicious animals and that he is concerned for the safety of his children walking out on their own property. He said as a landowner he and his children should be able to walk on their property and not worry about animals attacking them. He asked the Commission to put themselves in his situation and he believes their feelings would be the same as his -- protection of his family and children and keeping up the property value.

CHAIRMAN VAN FLEET asked if any of the incidents thus far have presented a problem to his children.

BRIAN FOSTER said his children normally stay on the asphalt driveway and when the pigs come around, the children come screaming into the house that there are wild animals outside. He said there is

no fence between the properties and he sees no reason why the dogs will not come onto his property. He said the dogs haven't come onto the property yet, but no one can say that it won't happen.

MCCOOL said as far as the situation with the neighbor to the east it was very unfortunate and he is sorry that it happened. He said all three incidents happened when they were building new cages and the dogs found weaknesses in the cages that they built. He said as soon as they recognized a weakness or that the dogs could escape, they have fixed that. He said his neighbor is asking the Commission to deny his petition based on the fact that occasionally his dogs have gotten out. He said he believes his neighbors chickens were over on his property. He said it is ludicrous that his neighbor would ask the Commission to deny the petition when on a daily basis his neighbor's chickens and dogs come onto his property. He said as far as the "viciousness" of the dogs, they breed Pomeranians which normally weigh between 4-10 pounds. He and added that they would be willing to agree to dogs weighing 40 pounds or less and said they have no intention of breeding any type of large dogs. He said they also have some miniature Doberman pinschers. He said the operation has been inspected by the State who issue the same type of breeding license that a pet store has to have. He said nowhere in their requirements does it say they have to have concrete anywhere in the facility. He said USDA also has no requirement for concrete.

MOTION: To allow the applicant one additional minute of rebuttal time.

MCKAY moved, **SHERMAN** seconded the motion and it carried (11-0).

MCCOOL said even the Sedgwick County Code does not require concrete.

CHAIRMAN VAN FLEET asked what type of breed of dogs they are expecting to kennel.

MCCOOL said only Pomeranians and added that they would have no problem stipulating a size limit. He said he has children and understands but he wants people to know that these are very small dogs that are very social.

CHAIRMAN VAN FLEET asked if the applicant would be willing to let the conditions specify only Pomeranians.

MCCOOL said they would prefer a size limit.

CHAIRMAN VAN FLEET asked what size limit?

MCCOOL said dogs weighing 35-40 pounds or smaller would be fine.

HENTZEN asked Mr. McCool how many pigs he had and what they do with them.

MCCOOL said they have six Vietnamese miniature pot belly pigs that they butcher for food.

MARNELL asked Mr. Parnacott does the applicant's behavior really have any bearing on this discussion because they have spent a lot of time talking about that, not issues such as location. He said the discussion seems to be centered on behavior and he wants to know if that should be considered or not, and if so, in what fashion.

BOB PARNACOTT, ASSISTANT COUNTY COUNSELOR said typically discussion is about land use and not the applicant or the operator. He said if there are questions raised about particular issues, the Commission can certainly try to address those through some sort of conditions or additional requirements and after that it is an issue of enforcing those requirements through County Code Enforcement. He concluded by saying that it was the use and not the applicant that the Commission should be looking at.

DENNIS asked for clarification on one of the Golden Rules which talks about how the zoning may detrimentally affect nearby property. He asked shouldn't that be one of the items that should be considered?

PARNACOTT said that provision is intended to address how the proposed use impacts nearby properties. He gave an example of a sand extraction operation and how the amount of traffic and blowing dust may affect nearby neighbors. He said it is the use and things that happen that are connected with the use that should be considered and sometimes that can be a gray line. He said if the use creates safety issues for property owners, then that should be taken into consideration.

MITCHELL said he had a question for the County Code Enforcement officer that was present.

TIM WAGNER, SEDGWICK COUNTY CODE ENFORCEMENT.

MITCHELL said he understood County Code Enforcement is requesting concrete for the runs because the dogs were digging out under the rocks.

WAGNER said not so much that the dogs are digging out but there is a sanitation issue also. He said dog waste can be absorbed by the rocks, which tend to be pretty porous so they don't know how the applicant is going to be able to keep that clean. He said non-porous materials can be washed down. He added that there is a history of this requirement from previous conditional use cases that have been approved in the County.

MITCHELL asked if the applicant can't keep the dogs in the run he has now, what good would a fence do for keeping them on his property?

WAGNER said he didn't know what good a fence would do if the dogs can dig out underneath it.

MARNELL asked for clarification whether concrete is or is not a requirement by Code.

WAGNER said typically it has been a requirement through the conditional use process.

SHERMAN clarified that the applicant has requested 65 dogs. He asked what is the maximum number of dogs that the applicant can have on the property.

WAGNER said he doesn't know what the maximum is by State Statute.

MILLER stated that he tried to get an answer from the State representative to see if there was some sort of minimum square footage per dog and there isn't. He said what they referred to was the Kansas Pet Animal Act which has some general guidelines that talk about there has to be enough space for the dogs to socialize and move naturally and freely and there needs to be enough space so that the dogs are not moving around in their own waste. He said he couldn't get anyone to specifically say "x" number of square feet are required per dog.

FOSTER asked if the application met the requirement for separation from property lines.

MILLER yes, however; it does not meet the 600 foot standard that was cited for requiring the screening fence.

MARNELL asked Mr. Parnacott if the Commission grants the application, can they require whatever conditions they feel are appropriate based on case testimony?

PARNACOTT said the Commission has quite a bit of discretion as long as the conditions are reasonable and are based on testimony.

MARNELL said so for an example, they can require the kennels to have concrete and tops over them so animals would not get out. He asked if that was reasonable requirement in Mr. Parnacott's opinion?

PARNACOTT said he believed that was a reasonable requirement for the Commission to impose, but added that they may have to disagree with that assessment some time down the road. He said if the Commission believes that is an appropriate solution based on the testimony they have heard, then it could impose those conditions.

MARNELL mentioned someone having the quiet enjoyment of their property and being seen by dogs that will bark. He asked if screening around the kennels would also be appropriate?

PARNACOTT said there have been some kennel cases in the past where noise limitations have been imposed.

MOTION: To deny subject to staff recommendation.

DENNIS moved, **MITCHELL** seconded the motion.

MARNELL said he was going to make a substitute motion because he looks at this as a zoning case, not a nuisance case, although he was not deaf to what he heard. He said if they had a responsible applicant, which he is not sure if they do or they don't, then this location for a kennel that is run properly would not be out of line to him in the County.

SUBSTITUTE MOTION: To approve subject to staff recommendation; that the kennels be made with concrete flooring and runs; that six-foot tall solid screening be provided around the kennels so there is no sight line from the run areas; and that the kennels have tops on them so the dogs cannot escape.

MARNELL moved, **MCKAY** seconded the motion.

MCKAY asked if the six-foot fence is to be concentrated to the kennel area that is enclosed.

MARNELL said that was a question for County Code Enforcement because his intention was the kennel area only which is what this application is about. He said if it is totally enclosed, then the neighbors would not see the dogs on their property.

FOSTER asked if Mr. Marnell wanted to include a limit on the size of the animals.

MARNELL said he did not think so. He said if the kennels are run properly, it is not going to make a difference whether the dogs are Pomeranians or Shepherds. He said the problem is if the kennels are not properly maintained.

PARNACOTT commented that the other area where there are dogs by the house is not part of the application area so no conditions can be attached to that location. However, he said it is still subject to County Code restrictions.

MILLER STEVENS asked for clarification on the application area.

PARNACOTT explained that the screening can be just around the kennel, it doesn't have to be around the whole application area.

SHERMAN asked about the dogs being out of the application area.

PARNACOTT said the conditions set by the Commission govern what goes on inside the application area. He said if the dogs are outside the application area, then standard Code and any other applicable codes would apply.

MCKAY verified that Code says no more than 10 adult dogs.

Staff said yes.

MCKAY asked Mr. Marnell if he would entertain a motion to limit the number of dogs.

MARNELL asked what type of limitation.

MILLER explained that in the application he recommended there be no more than 35 dogs in any one kennel at one time. So if the applicant only does the one kennel then he will be limited 35 dogs. But, he has the potential to go to 65 if he opens the other kennel, unless the Commission recommends something different.

There was considerable discussion concerning the kennel areas and application area.

SHERMAN (out @3:00 P.M.)

SUBSTITUTE MOTION FAILED (4-7).

DENNIS, DOWNING, FARNEY, FOSTER, HENTZEN, MILLER STEVENS, MITCHELL - No.

MARNELL said he was going to oppose the motion to deny because this was a zoning issue and if the Commission makes it anything other than a zoning issue then the Commissioners are not being true to what their mission should be. He added that he didn't condone bad behavior.

ORIGINAL MOTION CARRIED (7-4).

MARNELL, MCKAY, KLAUSMEYER, VAN FLEET – No.

6. **Case No.: CON2010-02** - Wichita Builders Inc., c/o Tim Dondlinger (owner/applicant) Poe and Associates, c/o Tim Austin (agent) Request City Conditional Use for a recycling processing center, outdoors:

Lot 7, Westport Industrial Park 6th Addition to Wichita, Sedgwick County, Kansas, generally located south of Pawnee Avenue, east of K-42, on the northwest corner of Sheridan Avenue and Casado Street.

BACKGROUND: The applicant is proposing the outdoor processing, storage and recycling of asphalt and concrete. The material comes from their various job sites throughout the community onto the approximately 7.2-acre, LI Limited Industrial ("LI"), mostly vacant, subject site legally described as Lot 7, Westport Industrial Park 6th Addition. If granted, the request will allow the expansion of Dondlinger and Sons Construction Company's (applicant/owner) existing facilities that include outdoor equipment and materials storage yard and adjacent company office. A portable rock crusher will be used to break down the asphalt and concrete for outside storage and subsequent recycling at the company's other job sites. The applicant proposes that the asphalt and concrete can be crushed to a minimum of ¾ - one inch rocks, per City and County specification for road gravel.

Article II, Sec II-B, 11, e, of the Unified Zoning Code (UZC) defines "Recyclable Materials" as "...including but not limited to metal, glass, plastic, and paper that is intended for reuse, remanufacture, or reconstitution for the purpose of using the altered form. Recyclable Material shall not include hazardous materials, industrial scrap materials, or used clothing, furniture, appliances, vehicles or parts

thereof.” Although not listed in this definition, asphalt and concrete have been considered recyclable materials.

Article II, Sec II-B, 11, h, of the UZC defines a “Recycling and Processing Center” as “...land use in excess of 400-sqaure feet devoted to the receipt, separation, storage, bailing, conversion and/or processing of recyclable materials, but not including wrecking and salvage yards.” By definition, the proposed use is a recycling and processing center. A rock crusher (portable or stationary) can be permitted with Conditional Use approval in the LI zoning district. The UZC requires a Conditional Use for a outdoor recycling and processing center, with a rock crusher, in the LI zoning district, such as the proposed application; UZC, Art II, Sec II-D, s.

The applicant proposes that the outdoors concrete and asphalt recycling and processing and storage center, with its portable rock crusher be operational as needed, sunset to sunrise. Average Daily Trips to be generated by the facility have not been determined. The applicant proposes that the stock piles of concrete/asphalt be up to 30 feet tall, with a typical height being 15-20 feet. The site plan shows access off of Sheridan Avenue, setbacks and utility easements, as well as a chain link fence around its south, west and north sides. It also shows the stock piles’ location confined to the front half of the site; however the applicant has stated that the stockpiles would be located anywhere on the site. The site currently has spill over storage from the applicant’s abutting equipment and materials storage yard. Concerns identified include noise, dust and truck traffic.

The site is located in the south end of one of the larger concentrations of LI zoning in the City. Development in the area around the site is mostly office-warehouse, some steel fabrication, various manufacturing facilities, the applicant’s equipment and materials storage yard and their offices. A private airstrip (Dead Cow airstrip) is located west of the site, across a drainage dedication. With the exception of the applicant’s outdoor equipment and materials storage yard there is little outdoor storage in the area. There are no rock crushers in the area. Further west of the site, between the Dead Cow and West Street, there is an auto wrecking and salvage yard.

CASE HISTORY: The subject property is platted as Lot 7, Westport Industrial Park 6th Addition, recorded with the Register of Deeds May 31, 1990.

ADJACENT ZONING AND LAND USE:

NORTH:	LI	Steel fabrication, office-warehouse
SOUTH:	LI	Contractor’s equipment and materials storage yard, office
EAST:	LI	Office, steel fabrication, office-warehouses
WEST:	LI	Drainage dedication, private airstrip

PUBLIC SERVICES: The subject property is located along the southwest arch of Sheridan Avenue and Casado Street, both paved and curbed two-lane local industrial streets and shown to remain the same on the 2030 Transportation Plan. In less than a one-quarter mile Sheridan intersects with Pawnee Avenue, a principle arterial which provides quick access to highways K-42 and US-54. All utilities are available to the site.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide” of the Comprehensive Plan identifies the subject site’s location as appropriate for the “Employment/ Industry Center” category’s development. Development types listed in this category include manufacturing and fabrication facilities, warehouse and shipping centers, call centers and corporate offices. Development in the site’s area is mostly office-warehouse, some steel fabrication, various manufacturing facilities and the applicant’s corporate office. The exception to the area’s current development pattern is the applicant’s outdoor equipment and materials storage yard and the abutting (west side) private airstrip (Dead Cow). The proposed outdoors concrete and asphalt recycling and processing and storage center, with its portable rock crusher, seems to be more appropriate for the Guide’s “Processing Industry” category, which promotes development such as aggregate and concrete plants, refineries, slaughterhouses rendering and

primary agricultural processing plant, salvage and recycling yards. The proposed outdoors concrete and asphalt recycling and processing and storage center with its portable rock crusher is an expansion of the applicant's business; its company office and its equipment and materials storage yard. As it is presented the proposed use is an accessory use to expand the applicant's business as a general contractor. The UZC requires a Conditional Use for an outdoor Recycling and Processing Center, with a rock crusher, in the LI zoning district, such as the proposed application

The UZC classifies a recycling and processing center outdoors as a "public and civic" type of use, as well as a rather broad group of uses including correctional facilities and churches. The UZC classifies office-warehouse, steel fabrication, manufacturing, rock crushing and outdoor storage as a principal use as "industrial, manufacturing and extractive" use types. The applicant's outdoor equipment and materials storage yard, with a portable rock crusher as well as the area's office-warehouse, some steel fabrication and various manufacturing facilities fall into the UZC's "industrial, manufacturing and extractive" use types.

RECOMMENDATION: The outdoor concrete and asphalt recycling and processing and storage center, with its portable rock crusher would introduce a new use into the area's development of mostly office-warehouse, some steel fabrication and various manufacturing facilities. The applicant's outdoor equipment and materials storage yard and the private airstrip are the exceptions to the area's development pattern. Concerns identified with the proposed use include noise, dust and truck traffic. As it is presented the proposed use is an accessory use to expand the applicant's business as a general contractor. The MAPC has considered and generally supported expansion of existing business sites, with conditions that address site considerations. Based upon these factors and the information available prior to the public hearings, planning staff recommends that the request for a outdoor concrete and asphalt recycling and processing and storage center with its portable rock crusher be APPROVED subject to the following conditions:

1. The outdoor concrete and asphalt recycling and processing and storage center, with its portable crusher, is permitted as an accessory use to the applicant's existing adjacent and abutting facilities. At such time as the site's principal occupant is no longer a construction company, Conditional Use approval for the recycling, processing and crushing of rock, asphalt, concrete or similar materials is null and void.
2. A drainage plan must be submitted and approved by the City Engineer.
3. Asphalt and concrete can be crushed to a minimum of $\frac{3}{4}$ - one inch rocks, per City and County specification for road gravel. All aggregate piles will be no higher than 20-ft and watered as necessary to minimize blowing dust. Opacity of dust and emissions of dust from the rock crusher, the aggregate piles or any facility cannot exceed opacity as determined by the Wichita Environmental Services – Air Quality Staff and the Kansas Air Pollution Control Regulations. If necessary provide conformation of compliance with any FAA standards in consideration to the abutting private airstrip.
4. Any stockpiling of fuels or chemicals on this site must be approved by the Wichita Environmental Services.
5. The applicant shall meet all permitting, reporting and operating requirements as necessary per the local, state and federal levels prior to any crushing activities on this site.
6. The level of noise generated by the rock crusher shall not exceed community standards as specified by City Ordinance and determined by the Wichita Environmental Services.
7. Submit a revised site plan to be approved by the Planning Director. The plan will show all improvements to the site.

8. All improvement to the site, including the drive to the site, shall be per City Standards.
9. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The site is located in the south end of one of the larger concentrations of LI zoning in the City. Development in the area around the site is mostly office-warehouse, some steel fabrication, various manufacturing facilities, the applicant's equipment and materials storage yard and their offices. A private airstrip (Dead Cow airstrip) is located west of the site, across a drainage dedication. With the exception of the applicant's outdoor equipment and materials storage yard there is little outdoor storage in the area. Further west of the site, between the Dead Cow and West Street, there is an auto wrecking and salvage yard.
2. The suitability of the subject property for the uses to which it has been restricted: The vacant property could be developed as office-warehouse, as fabrication and manufacturing facilities, or more outside storage for the applicant's current business as a general contractor. However, none of the above uses allow the applicant's business to expand and make it more efficient by providing a use (an outdoor concrete and asphalt recycling and processing and storage center with a portable rock crusher) currently provided by other companies.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Concerns identified with the proposed use include noise, dust and truck traffic. The proposed outdoor concrete and asphalt recycling and processing and storage center with a portable rock crusher introduces a new use into the area's development of mostly office-warehouse, some steel fabrication and various manufacturing facilities. The proposed conditions of the Conditional Use attempt to minimize these concerns.
4. Length of time subject property has remained vacant as zoned: The aerials in GeoZone go back to 1997 and the property looks much like it does today; mostly vacant, with some spillover from the applicant's outdoor equipment and materials storage yard.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The "2030 Wichita Functional Land Use Guide" of the Comprehensive Plan identifies the subject site's location as appropriate for the "Employment/ Industry Center" category's development. Development types listed in this category include manufacturing and fabrication facilities, warehouse and shipping centers, call centers and corporate offices. Development in the site's area is mostly office-warehouse, some steel fabrication, various manufacturing facilities and the applicant's corporate office. The exception to the area's current development pattern is the applicant's outdoor equipment and materials storage yard and the abutting (west side) private airstrip (Dead Cow). The proposed outdoors concrete and asphalt recycling and processing and storage center, with its portable rock crusher, seems to be more appropriate for the Guide's "Processing Industry" category, which promotes development such as aggregate and concrete plants, refineries, slaughterhouses rendering and primary agricultural processing plant, salvage and recycling yards. The proposed outdoors concrete and asphalt recycling and processing and storage center with its portable rock crusher is an expansion of the applicant's business; its company office and its equipment and materials storage yard. As it is presented the proposed use is an accessory use to expand the applicant's business as a general contractor. The MAPC has considered and generally supported expansion of existing business sites, with conditions that

address site considerations. The UZC requires a Conditional Use for an outdoor Recycling and Processing Center, with a rock crusher, in the LI zoning district, such as the proposed application

6. Impact of the proposed development on community facilities: Dust and emissions of dust from the rock crusher and the aggregate piles, an increase in truck traffic and run off from the site.

BILL LONGNECKER, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

MITCHELL moved, **JOHNSON** seconded the motion, and it carried (12-0).

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7. **Case No.: CON2010-05** - Shelli Trefethen, Sherri Powell and Sherman H. McNeely (owner) Request County Conditional Use for a pump station for Bentley Water Supply (Utility, Major) on property zoned RR Rural Residential on property described as:

A tract beginning in the Northwest corner of the Northwest Quarter; thence East 659.92 feet; thence South 664.51 feet to the North line of the South half of the Northwest Quarter of the Northwest Quarter; thence West to the West line; thence North to beginning EXCEPT for the roads on the North and West, Section 11, Township 25 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, generally located on the southeast corner of 151st Street West and 117th Street North.

BACKGROUND: The application area contains approximately eight acres located at the southeast corner of North 151st Street West and West 117th Street North. The property is zoned RR Rural Residential (“RR”) and contains Wichita Water Well No. 29 and a pump station. The applicants are seeking Conditional Use approval to permit a “utility, major” on their RR zoned land. County-wide zoning did not go into effect until 1985, the existing facilities on this site are considered to be legal non-conforming uses.

The City of Bentley obtains its water from a different well that is also owned by the City of Wichita, but the Kansas Department of Health and Environment has told the City of Bentley it can no longer use that water well; however they have given permission to use Well No. 29. To get water from Well No. 29 to Bentley a new booster pump station needs to be installed. See the site plan associated with this application.

Section II-B.13.i and j of the Wichita-Sedgwick County Unified Zoning Code (UZC) defines a “utility, major” as generating plants; electrical switching facilities and primary substations; water and wastewater treatment plants; water tanks...and similar facilities of agencies that are under public franchise or ownership...that exceed 150 cubic feet in size and six feet in height. Utility, majors are permitted in the RR district with Conditional Use approval. A portion of the site will be enclosed with a chain link fence. A six-inch water line will be installed that will carry the water west of the well to the North 151st Street West right-of-way, and then south to Bentley.

Surrounding property is zoned RR Rural Residential and either developed with large lot residences, farmsteads or agriculture.

CASE HISTORY: None identified

ADJACENT ZONING AND LAND USE:

NORTH: RR Rural Residential; large lot residential or agriculture

SOUTH: RR Rural Residential; large lot residential or agriculture
EAST: RR Rural Residential; large lot residential or agriculture
WEST: RR Rural Residential; large lot residential or agriculture

PUBLIC SERVICES: The facility will not require sewer or water service beyond what the project will provide itself.

CONFORMANCE TO PLANS/POLICIES: The County's 2030 functional land use guide designates this site as "Rural" and not within any small city's 2030 Urban Growth Area. The Rural category encompasses land outside the 2030 urban growth areas for Wichita and small cities. This category is intended to accommodate agricultural uses, rural based uses that are no more offensive than those agricultural uses commonly found in the County, and predominantly larger lot residential uses. The utilities location guidelines of the Comprehensive Plan indicate utility facilities that produce significant noise, odor and other nuisance elements should be located away from residential areas.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The greater neighborhood is a rural portion of the county that is typically used for agriculture but has seen substantial large lot residential development. There are a number of wellheads and pump stations in the greater area. These properties are zoned RR Rural Residential.
2. The suitability of the subject property for the uses to which it has been restricted: The site has an existing water well and pump station; however, the new circumstance of providing water to Bentley requires an additional pump station.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed new pump station should not have any greater impact than the existing pump station.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: The purpose of the project is to provide a safe and reliable water supply for the citizens of Bentley. Approval of the request would allow the project to move ahead in a timely and economical manner. Denial presumably would be a hardship to providing the community with a safe and reliable supply of water.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The project is consistent with adopted plans in that the request should not increase any noise, odor or other nuisance factors not already present.
6. Impact of the proposed development on community facilities: The project should improve water service for the City of Bentley.

DALE MILLER, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

MITCHELL moved, **JOHNSON** seconded the motion, and it carried (12-0).

The Metropolitan Area Planning Department informally adjourned at 3:05 p.m.

State of Kansas)
Sedgwick County) ^{ss}

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2010.

John L. Schlegel, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)